

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHEMIMAGE CORPORATION,	:
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Plaintiff,	:
	:
-v-	:
	:
JOHNSON & JOHNSON et al.,	:
	:
Defendants.	:
	:
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JESSE M. FURMAN, United States District Judge:

At closing arguments on March 28, 2025, at 11:00 a.m., counsel should be prepared to address the following topics:

- **JSC Milestone Determination:** Whether Ethicon improperly terminated the Agreement for cause on the ground that ChemImage failed to meet Milestone 1B because the Agreement called for determinations with respect to the milestones to be made by the JSC, including (1) which of the Agreement’s JSC deadlock procedures would have applied to a disagreement over whether ChemImage achieved Milestone 1B; (2) whether, under the appropriate deadlock procedure, for-cause termination for failure to achieve Milestone 1B would have been inevitable; and (3) whether, as a matter of New York contract law, it makes a difference if termination for cause would have been inevitable.
- **Scope of the Termination Letter:** Whether the Court can consider reasons for termination not set forth in the March 6, 2023 Termination Letter and, if not, whether the Court can consider Defendants’ theory that ChemImage breached the Agreement because the final VAB report failed to satisfy the Milestone Acceptance Protocol’s 80% specificity and sensitivity thresholds with respect to LAR and cholecystectomy scenes.
- **Linkage Scenarios:** The significance, if any, of ChemImage’s “linkage” scenarios — prepared in response to the four rounds of Q&A — including but not limited to whether they show either that the data in the final VAB report was “evaluable” or that the purported breaches set forth in the Termination Letter were curable.
- **Tortious Interference:** What evidence there is to support a finding that Johnson & Johnson intentionally procured the alleged breach of contract and whether the economic interest defense would apply.

- **IP Impairment Damages:** Whether and to what extent the Court should rely on Mr. Plastino's calculation of IP impairment damages, including but not limited to (1) whether his definition of the "subject assets" includes both general and consequential damages; (2) whether his valuation failed to sufficiently account for post-2019 Project Erie developments; (3) whether the Court must evaluate ChemImage's success in achieving the VAB component of Milestone 1B in order to properly assess IP impairment damages; and (4) how the Court should proceed if it agrees with some (or all) of Mr. Donohue's objections to Mr. Plastino's valuation.

SO ORDERED.

Dated: March 26, 2025
New York, New York



JESSE M. FURMAN
United States District Judge